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August 21, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Stop Code -- 1170
Washington, D.C. 20554

Re: Reply Comments Of The Hearst Corporation, MM Docket No. 98-35

Dear Ms. Salas:

Enclosed on behalf of the Hearst Corporation are an original and eleven (11) copies of Reply Comments in response to the Notice of Inquiry, FCC 98-37, released March 13, 1998, issued in MM Docket No. 98-35.

If you have any questions regarding the enclosed, please contact this office.

Very truly yours,

Jennifer L. Blum

Enclosures

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Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
1998 Biennial Regulatory Review -	)	
Review of the Commission's Broadcast	)	MM Docket 98-35
Ownership Rules and Other Rules Adopted	)	
Pursuant to Section 202 of the	)	
Telecommunications Act of 1996	)	

To: The Commission

REPLY COMMENTS OF THE HEARST CORPORATION

The Hearst Corporation ("Hearst"), by its attorneys, hereby files the following reply to the Comments in response to the Commission's Notice of Inquiry, FCC 98-37, released March 13, 1998, and particularly with regard to the continued efficacy of the newspaper/broadcast cross-ownership rule.

INTRODUCTION

Approximately twenty parties, including Hearst, formally commented on the newspaper/broadcast cross-ownership rule.[1] Of those twenty commenters, only three urged the Commission to retain or strengthen the current rule.[2] The overwhelming majority of formal commenters submitted well-documented arguments and legal analysis that support the rule's repeal.

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[1] In addition to the formal comments, a number of parties filed informal comments by e-mail. Of these, the majority support the current rule.

[2] See Comments of the Center for Media Education, Media Access Project (on behalf of Office of Communications, Inc., United Church of Christ and Black Citizens for a Fair Media), and Independent Free Papers of America. In addition, Morality in the Media generally argued for the retention of all ownership rules, but did not address specifically the newspaper/broadcast ownership rule.

Many of these arguments are similar to those made in Hearst's comments. Because the strength of the record is overwhelming and needs little repetition, Hearst focuses this Reply on first, responding briefly to arguments made by the few commenters opposing repeal and second, highlighting several points made by other advocates for repeal that complement Hearst's comments.

I. There Is No Legal Basis or Economic Analysis That Supports Retention of the Newspaper/Broadcast Cross-Ownership Rule.

Supporters of the current rule argue that the Commission's basis for its broadcast ownership regulations, i.e., the need to protect broadcast spectrum and to ensure diversity in the broadcast industry, remains valid. The Center for Media Education, for example, claims in part that the new technologies in today's marketplace are not sufficient to ensure the public will have access to information from diverse and antagonistic sources. It argues that significant portions of the public do not have access to the Internet or cable television, and, therefore, the availability of these media outlets cannot ensure diversity.[3] However, the Center for Media Education's own statistics do not support this assertion: two-thirds of all households receive cable television and new media still in their infancy have also shown rapid market penetration.[4]

As the Newspaper Association of America ("NAA") demonstrated in its comments, more Americans use the Internet than subscribe to daily newspapers. Even without home access, the Internet is readily available at little or no cost in libraries and other public locations. Further, there is significant evidence that the Internet's coverage is not only global in nature but local as well.[5]

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[3] Comments of Center for Media Education, et al. at 8-9 ("Center for Media Education").

[4] Direct broadcast satellite ("DBS") reaches 5.1 million households and 23% of households have Internet access. Center for Media Education at 8-9.

[5] Comments of the Newspaper Association of America at 36-38 ("NAA").

Hearst and several other commenters documented the cable TV industry's significant growth and dramatic increase in household penetration since 1975 [6] In addition, the cable industry now provides local news and information as demonstrated by examples such as News Channel 8 in Washington, D.C., BayTV in San Francisco, and New England Cable News, and also provides an outlet for local advertising.

While the Center for Media Education and Media Access Project are concerned that co-ownership will result in censorship or single format reporting, the vast majority of the record evidence demonstrates the contrary -- that repealing (or even relaxing) the rule would increase competition and diversity in reporting and programming. In the context of relaxing the radio ownership rules the Commission recognized that an increased number of owners does not necessarily result in marketplace diversity.[7] In a recent speech to the California Broadcasters Association recognizing the explosion of "competition to traditional broadcasting from other information sources," Commissioner Powell also noted that while "current ownership limits increase the number of individuals owning broadcast properties, . . . it is difficult to meaningfully articulate what value that is to actual consumers."[8]

Media Access Project asserts, without adequate legal basis, that the newspaper/broadcast cross-ownership rule is essential to protect citizens' First Amendment rights against a theoretical "single news monopoly stretching across the entire country."[9] Similarly, the Independent Free Papers

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[6] Comments of the Hearst Corporation at 10-11("Hearst"); Comments of National Association of Broadcasters at 5 ("NAB").

[7] See Revision of Radio Rules and Policies, 7 FCC Rcd 2755, 2774 (1992).

[8] Commissioner Michael K. Powell, Remarks before the California Broadcasters Association (July 27, 1998)(as prepared for delivery)(transcript available at http://www.fcc.gov/speeches/Powell).

[9] Comments of Office of Communication, Inc., United Church of Christ and Black Citizens for a Fair Media at 7 ("Media Access Project"). In fact, as Hearst and several other commenters illustrated,

Association argues that daily newspapers have print monopolies in nearly 99% of all cities.[10]

To suggest that daily newspapers currently have monopoly status greatly exaggerates the state of the industry, and there is no valid support for making such a finding. In fact, daily newspaper circulation peaked in the 1980s and has not increased since.[11] Indeed, residents in many metropolitan areas have access to several daily newspapers including not only the urban dailies, but also suburban dailies and specialty dailies. The number and penetration of weekly and free newspapers have additionally grown significantly, as even the Independent Free Papers of America recognizes. The evidence submitted in this proceeding shows that both specialty newspapers and weekly newspapers make a significant contribution to the print media market. For example, according to NAA, in 1975 the total circulation of weekly newspapers was 35,892,409. In 1997, that circulation had almost doubled to 70,434,300.[12] Given these facts, there is no First Amendment or "monopoly" premise for retaining the rule.

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the current rule actually violates First Amendment rights under an intermediate scrutiny analysis. Comments of Hearst at 26-30; The Media Institute at 11-13; Tribune Company at 4-14; NAA at 85-89. NAA also argues that strict constitutional scrutiny is warranted. Id. at 101-04.

[10] Comments of Independent Free Papers of America at 5.

[11] Newspaper Association of America, Facts About Newspapers 1998, A Statistical Summary of the Newspaper Industry at 12 (1998)("Facts about Newspapers"). As NAA demonstrated, while the overall circulation of dailies remains steady, the number of daily newspapers has declined. Comments of NAA at 33.

[12] Facts About Newspapers 31. Independent Free Papers of America cites even stronger statistics with circulation currently at 85,154,887 for free papers and more than 100,000,000 for paid and free weekly papers combined. Comments of Independent Free Papers of America, at i, 5-6

II. Repeal of the Cross-Ownership Rule Would Increase Competition and Diversity in the Media Marketplace

A. The Record is Replete with Evidence that Common Ownership Would Create Competitive Efficiencies Not Possible with Joint Ventures

Gannett and Chronicle both filed comments with accompanying economic analysis showing that economic benefits are achieved when co-owned media use news and information originally gathered for another outlet. More specifically, the jointly owned companies benefit from the ability to amortize the original cost of gathering the information and to offset these costs against "additional revenues from each use of the information."[13] Gannett and Chronicle point to the development of BayTV and The Gate website as examples of these benefits.[14] More importantly, the benefits of such joint ownership extend to the consumer as the efficiencies created result in new media ventures and information outlets, as well as improved programming and reporting.[15]

Although joint venture relationships can also provide some programming and reporting improvements, as Hearst noted in its comments, the incentives and benefits of a joint venture between separately owned entities tend to be short term and do not provide the same advantage and benefits as cross-ownership.[16] Several commenters expand upon this point and demonstrate that restricting new projects to joint ventures, rather than joint ownership, overlooks additional economic and public interest benefits that do not develop in a joint venture relationship.[17]

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[13] Comments of Gannett Company, Inc. at 29.

[14] Comments of Gannett at 30; Chronicle Publishing Company at 16-23 ("Chronicle").

[15] Comments of Gannett at 31; see also Stanley M. Besen & Daniel P. O'Brien, Charles Rivers Associates, Inc., An Economic Analysis of the Efficiency Benefits from Newspaper-Broadcast Cross-Ownership, prepared as appendices for the Gannett Company and Chronicle Publishing Company at 2-3 ("Besen & O'Brien").

[16] Comments of Hearst at 22, n. 59.

[17] See, e.g., Comments of Gannett at 28-31; Chronicle at 25-27; Besen & O'Brien at 14-15.

Companies involved in joint ventures often have conflicting ideas, goals and incentives and, inherently, each company will focus most on what is in its own best interest, rather than on the best interest of the joint venture project.[18] Further, joint venture companies may not be as willing to underwrite significant financial losses that occur in the early years of a new media venture.[19]

B. The Record Demonstrates That Grandfathered Joint Ownership Relationships Create More Efficiencies and More Diversity

Despite the comments of a few to the contrary, the substantial evidence in this proceeding demonstrates that newspaper/broadcast cross-ownership relationships grandfathered since 1975 continue to foster more and better local news and public affairs programming than separately owned entities. Indeed, many commenters indicate that co-owned entities will diversify their program content among their co-owned media in order to maximize their audiences.[20] Parties such as Chronicle demonstrate that although newspapers and broadcasters both disseminate news and information, they do so in a complementary rather than conflicting manner, and continue to do so even when jointly owned.[21] Contrary to the notion that the number of voices would be narrowed if cross-ownership is permitted, many commenters joined Hearst in noting that even where joint ownership already exists, each entity maintains separate editorial policies and staff.[22] In addition, Chronicle's experience shows that the efficiencies created by joint ownership result not only in more

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[18] Comments of Gannett at 31; Besen & O'Brien at 15.Comments of Chronicle at 27. In addition, Chronicle cites to the Besen & O'Brien Report finding that the number of new media enterprises will be fewer under the current rule than through joint ownership due to the higher costs and risks associated with joint ventures. Id.

[19] Chronicle notes that it has experienced significant losses on its new media ventures. Comments of Chronicle at 14.

[20] Comments of Gannett at 21-22; Lee Enterprises, Inc. at 5 ("Lee"); NAA at 59-65.

[21] Comments of Chronicle at 12-13.

[22] Comments of Chronicle at 19; Lee at 5; NAB at 5-6; NAA at 61.

in-depth news coverage through existing media, but increase outlet diversity through the creation of new and additional methods for disseminating news that otherwise would not be economically possible.[23]

NAA makes the similar point that "joint ownership can be expected to increase the quantity of new(s) and informational programming as well as diversity of viewpoints, and, in many cases, may provide the only alternative to the demise or marginalization of a newspaper or a struggling broadcast station."[24] Indeed, Chronicle cites comparative evidence that where cross-ownership is permissible between radio and television, the cross-owned stations "spend a greater percentage of their resources on programming and carry more informational programming than other stations."[25]

C. The Advertising Media Market Would Remain Competitive With the Repeal of the Newspaper/Broadcast Cross-Ownership Rule

Several commenters supported Hearst's own finding that the relevant media market -- defined in the Notice of Inquiry as the advertising market -- is competitive. Hearst commends the Media Institute which, like Hearst, points out that competition in the advertising market is unlikely to decrease if the newspaper/broadcast cross-ownership rule is repealed because television and newspapers hardly represent perfect substitutes for one another.[26] The Media Institute demonstrates that in many instances the two outlets serve as complements to one another, not substitutes.[27] The

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[23] With regard to Chronicle's experience, it discusses the creation of its website, The Gate, and its 24-hour local cable news station, Bay TV, both of which have penetrated the market in impressive fashion, but neither of which is profitable. Comments of Chronicle at 14.
[24] Comments of NAA at 65; see also NAA's discussion at 61-65 concerning some of the "value added" services that result from cross-ownership.
[25] Comments of Chronicle at 12.
[26] Comments of the Media Institute at 2-3.
[27] Id. at 3.

Media Institute, the National Association of Broadcasters and others indicate that rather than raising advertising rates and limiting competition, cross-ownership of newspapers and broadcast stations in the same market may result in a more competitive advertising market as a result of discounted advertising packages, cross-selling and promotion.[28]

Hearst agrees with the NAA's persuasive analysis that the Commission should not limit its review of the local advertising market to video advertising, radio advertising and daily newspaper advertising, without also considering the impact of other advertising outlets such as direct mail, regional magazines, weekly newspapers and the yellow pages.[29] Hearst also agrees with NAA's finding that "just as the very availability of an alternate media 'voice' ensures diversity, the availability of a wide array of alternative outlets for advertising offsets any concerns as to the current 'market power' of any particular outlet."[30]

CONCLUSION

For the reasons set forth above and in Hearst's initial comments, Hearst encourages the Commission to repeal the newspaper/broadcast cross-ownership rule. The overwhelming majority of the record evidence fully supports a finding that the level of both diversity and competition in today's multi-media marketplace have increased to such a point that retaining the prohibition on newspaper/broadcast cross-ownership adopted more than twenty years ago no longer serves the public interest.

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[28] Id. See also Comments of the National Association of Broadcasters, Appendix B, A Study to Determine Certain Economic Implications of Broadcasting/Newspaper Cross-Ownership, Bond & Pecaro at 19.

[29] Comments of NAA at 75-76.

[30] Id. at 77.

Respectfully submitted,

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